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OF COUNSEL

September 10, 2007

HAND DELIVERED

Honorable Ross Johnson, Chairman
Commissioners Ray Remy, Gene Huguenin,
Bob Leidigh and Tim Hodson
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Agenda Item 10 - Pre-Notice of Regulation 18530.31

Dear Mr. Chairman and Commissioners:

The following comments are submitted on behalf of the California Republican Party and several trade association PACs which are interested in the proposed regulation. In addition, the following alternative draft regulation is submitted which in our view more correctly analyzes and addresses the Gov't Code § 85303 issue this regulation must interpret.

Summary of Comments:

- The staff draft regulation has the following problems: inconsistency with the statutes, creating "legal fiction" presumptions; allocation formulae that don't work in the real world and actually are inconsistent with another FPPC regulation; and faulty assumptions about non-monetary contributions "used" to make contributions, which demand a rewrite or discarding entirely.
2. The proposed regulation also will impose substantial and unwarranted burdens on political parties and PACs as drafted.
 3. Apparently, the entire dispute between staff and the regulated community comes down to contributions made for fund raising support. The staff fails to explain what distinguishes fund raising support from all other types of legal and administrative support of political parties and PACs and why this distinction threatens the contribution limits system.
 4. The proposed alternative regulation attempts to address the 85303 issues with

greater clarity, consistency, and fidelity to the statute and longstanding interpretations.

Detailed Comments:

A. Background

This regulatory project began in 2006 with a fairly simple request – to determine why the Commission believed there was statutory authority to impose limits on contributions for only one type of support of PACs (and by implication other committees such as political parties) – their fund raising expenses. Current regulations made clear that other types of administrative support of committees, such as legal and accounting costs, were not contributions and thus were not subject to any existing contribution limits.

In 2006, the FPPC staff declined to answer that question – and actually implied that other administrative expenses might be subject to payment only by the use of limited contribution dollars. After a request was made to reconsider this position in late 2006, the Commission directed staff to reconsider the matter by regulation, and the staff came back with the same, even more confused non-answer. In March 2007, the Commission then directed the staff to answer a very limited question - whether some staff expenses were “administrative” and not “fund raising” - and to draft a regulation to answer the broader question about the meaning of the Proposition 34 amendment adding Government Code section 85303, subdivisions (a)-(c).

From our perspective, the staff’s draft regulation takes confusing positions, some positive and some negative. First, the regulation appears to take a step back from the FPPC’s longstanding position on the former issue – that “administrative” and perhaps other expenses may be paid for with unlimited funds. However, the staff also appears to draw back from its conclusions in the recent *Bell Advice Letters* to say that costs incurred for “permanent” staff salary for fund raising activity can be paid from Gov’t Code § 85303(c) funds. (Subdivision (g)(2).) While this is a welcomed change, the term “permanently” as used may require some clarification, and the inconsistency with the first point is palpable.

Second, the staff draft also says that *any* funds raised for both candidate support and non-candidate support purposes somehow are limited if raised in a single contribution check. This is surprising for many reasons, set forth below, but in particular because when the Commission adopted Regulation 18534 just late last year, it reached a totally different conclusion –that funds raised for state candidate support and other purposes could be divided and treated as raised for different purposes under Section 85303.

B. Committees Affected by the Regulation

The proposed regulation affects the following types of committees:

Political party committees – which are not technically “sponsored committees”: These committees raise money by event fund raising and other solicitation methods (direct mail, telemarketing, donor clubs) for multiple state and federal accounts and purposes. Event fund raising is performed by both internal “staff” and outside consultant/fund raisers.

(B) Corporate and labor union sponsored PACs – “sponsored committees” that use their treasury funds to pay for administrative costs for processing of employee payroll deduction contributions and labor member payroll deduction contributions. These organizations typically have no special event or outside fund raising costs.

(C) Trade association PACs - “sponsored committees” that use a combination of dues invoice fund raising and event or donor club fund raising. Typically, most such PACs use internal “staff” and on occasion outside consultant/fund raisers.

Independent PACs that are often not “sponsored committees” but may rely upon their contributors’ funds to defray fund raising expenses. Some larger independent PACs are sponsored committees with non-profit sponsors.

There have been no FPPC enforcement cases, to our knowledge, arising from problems with political party fund raising costs or with sponsored PAC fund raising costs. In addition, there is little hypothetical reason for concern about potential for donor support of such fund raising costs with Gov’t Code § 85303(c) dollars – the fund raising costs generally are finite and self-limiting, because all of these organizations have alternate uses of Gov’t Code § 85303(c) dollars beside the payment of fund raising expenses.

C. Draft regulation raises 3 fundamental questions for the Commission

The fundamental questions posed by the draft regulation appear to boil down to the following: (1) Why does the staff believe that contributions made to committees and political parties for use for fund raising support purposes should be treated differently than contributions for use for administrative support and other non-candidate purposes? (2) If the staff believes there is a statutory basis for different treatment, where does the staff find any such distinction in Gov’t Code § 85303 or anywhere else in the Political Reform Act? (3) If the staff believes that expenses that would be payable with unlimited dollars under Gov’t Code § 85303 (c) must be paid using Gov’t Code § 85303(a) dollars, if § 85303(a) and § 85303 (c) contributions are made by the contributor in a single check, what authority does the staff find for that conclusion?

D. The Commission is without authority to adopt regulations that lack statutory authority, as noted by the Third District Court of Appeal.

The Commission's authority to adopt interpretive regulations is limited by the language and meaning of the statutes they interpret and may not simply reflect the policy preferences of the staff or the Commissioners. This is a fundamental tenet of the law most recently affirmed by the Third District Court of Appeals in *Citizens to Save California v. Fair Political Practices Commission*:

The FPPC's authority to promulgate regulations is governed by section 83112, which provides, in relevant part: "The Commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of this title, and to govern procedures of the Commission. These rules and regulations shall be adopted in accordance with the Administrative Procedure Act ... and shall be consistent with this title and other applicable law."

Section 83112 expressly incorporates the dictates of the Administrative Procedure Act (§ 11340 et seq.), which provides that to be effective, regulations "shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law" (§ 11342.1) and that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." (§ 11342.2)

Because the FPPC is charged with administering the PRA, its view of the regulations enforcing and the statutes comprising the PRA is entitled to great weight unless clearly erroneous or unauthorized. (*Californians for Political Reform Foundation v. Fair Political Practices Com.* (1998) 61 Cal.App.4th 472, 484, 71 Cal.Rptr.2d 606.) "[W]here the regulation at issue is one deemed necessary to effectuate the purposes of the statute, we apply a more deferential standard of review, requiring only that the regulation be reasonable." (*Ibid.*) However, we do not defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. "The court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11, fn. 4, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) [145 Cal.App.4th 746, 757.]

In light of the foregoing, the Commission must be careful to ensure that its regulations in this area are supported by statutory authority. Our view on this is clear: There is no statutory basis for concluding that fund raising expenses of a political party or a PAC are subject to payment only with limited contributions in whole or in part. Moreover, there is no statutory basis for the Commission to go backward and to find that administrative or other expenses of a political party or PAC are subject to limits, whether the contributions used to pay for such

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expenses are commingled with contributions used to make contributions to candidates for elective state office.

E. Staff's "legal fiction" underlies the faulty regulation, which has four serious defects.

The crucial conceptual error is stated in point-blank fashion in the first sentence of the staff's memorandum. The "[s]taff believes that persons who contribute to or administer committee fund raising activities act to further the purpose for which the funds are raised, and are properly said to have adopted that purpose as their own."

The staff characterizes (without any explanation) any contrary view as "seem[ingly] absurd on its face." As Lance Olson, Esq., on behalf of the California Democratic Party in his June 12, 2007, letter to this Commission, and several witnesses at the June 2007 Commission meeting noted, contributors who contribute to support the myriad of other, non-candidate support purposes of a political party committee or a PAC, know and intend their contributions will be used for these purposes and are not adopting a candidate-support purpose as their own.

In my April 19, 2006, letter to the Commission staff, I devoted five pages of analysis to the texts of applicable provisions of Proposition 73 (1988), Proposition 208 (1996) and Proposition 34, and to the staff's own mid-1990s advice letter on the subject of what Gov't Code § 85303 meant. The staff's conclusion that only one, candidate-supporting purpose is intended also is inconsistent with a very common fund raising method used by political parties and PACs whose fund raising solicitations explicitly identify multiple fund-raising purposes. Typically, a political party will explicitly solicit donors for contributions to its "all purpose" and "restricted use" accounts in the same solicitation. PACs do the same thing.

Moreover, with respect to what Proposition 34, Gov't Code § 85303 provides, the appellate court also stated:

Proposition 34's purpose, as stated in section 1(b), is "[t]o ensure that individuals and interest groups in our society have a fair and equitable opportunity to participate in the elective and governmental processes," and "[t]o minimize the potentially corrupting influence and appearance of corruption caused by large contributions by providing reasonable contribution and voluntary expenditure limits." (*Ibid.*)

This legislative purpose is implemented through *precise limits on contributions for the support or defeat of candidates for elective state offices*, and in some cases payments for communications that merely mention a candidate, as set forth in Chapter 5 of the PRA

(section 85100 et seq.). Limits on contributions by individuals are imposed by section 85301. Contributions by small contributor committees are limited by section 85302. Payments for communications that clearly identify a candidate for elective state office without advocating the candidate's election or defeat are limited by section 85303. *Otherwise, "[n]othing in this chapter shall limit a person's contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office."* § 85303, subd. (c). [Italic emphases added.]

The staff memorandum departs from consistency with Gov't Code § 85303 in four ways.

First, the memorandum adopts the "legal fiction" that all fund raising for political parties and candidates is subject to Gov't Code § 85303(a) and (b) limits if the donor "clearly indicates to the committee any of the following intentions: (b) (1) that **all or part** of the contribution be deposited into an all-purpose bank account; (2) that **all or part** of the contribution be used to make contributions to candidates for elective state office; (3) that **all or part** of the contribution be used to raise funds that will be used to make contributions to candidates for elective state office." (Emphases bolded.)

Why should this intent be presumed when the statute itself draws a line between Gov't Code § 85303(a) and (b) contributions and Gov't Code § 85303(c) contributions? The language of the staff's draft regulation establishes a standard that presumes intent to make Gov't Code § 85303(a) and (b) contributions whenever a contributor sends a single check for both Gov't Code § 85303(a)/(b) and Gov't Code § 85303(c) purposes .

Second, the draft regulation not only re-characterizes the donor's intent, but also makes it more difficult for the political party or the PAC to raise funds via a single check written in response to a solicitation for Gov't Code § 85303(a)/(b) purposes and Gov't Code § 85303(c) purposes. There is no basis for this presumption or for imposing this burden on committees and contributors.

Most important, Regulation 18534, adopted by the Commission in December 2006, clearly goes in the opposite direction. Subdivision (c) of Regulation 18534 acknowledges that contributions made for the purpose of making contributions to candidates (under Gov't Code § 85303(a)/(b)) and for non-state candidate support purposes under Gov't Code § 85303(c) "may be split between a committee's 'all purpose' and 'restricted use' accounts at the time of deposit..." Thus, there is a fundamental inconsistency between subdivision (b)(1) - (3) of the proposed regulation and subdivision (c) of Regulation 18534 in this regard. (There is also another such inconsistency discussed below at p. 7.)

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The staff's approach here is eerily similar to the approach taken by the staff and Commission - and rejected by the Third District Court of Appeal - with respect to Regulation 18530.9.¹ The staff approach goes well beyond simply adopting the "indirect analysis" about which the staff and I have debated in previous letters and memoranda, adopting the "overbroad" characterization under the "all or part" language of 18530.31(b), lines 13, 14 and 16 .

The staff refuses to come to grips with the obvious meaning of Gov't Code § 85303(c) that any contribution made or used for purposes other than direct contributions or non-monetary contributions to candidates for elective state office, is not subject to Proposition 34 limits.

Third, the staff's allocation formula approach in subdivision (f) of the draft regulation is inconsistent with Gov't Code § 85303(c) and simply compounds the complexity and confusion of the proposed regulation. If a committee is able to avoid Scylla by getting multiple checks from a single donor to avoid the "all or part" language of subdivision (b)(1)-(3), then it falls into the Charbydis of allocation of contribution based upon the percentage of the Gov't Code § 85303(a) or (b) funds attributable to candidate support. While subdivision (f) assumes this calculation is simple, in fact it is much more complex. The staff proposes either a single event-based allocation or a calendar year-based allocation of Gov't Code § 85303(c) funds. This raises many problems: (1) funds raised in one year often aren't spent the same year; (2) for political

¹ The appellate court rejected the Commission's attempt to use a "legal fiction" such as the one contained in the quoted portion of the staff memorandum concerning this proposed regulation – in *Citizens to Save California v. FPPC*, *supra*, 145 Cal.App.4th at 751 and 753, where it said: "It appears the FPPC recognized that *Citizens Against Rent Control v. City of Berkeley*, *supra*, 454 U.S. 290, 102 S.Ct. 434 precludes limits on contributions to ballot measure committees and attempted to evade this prohibition by the legal fiction that contributions to a candidate's ballot measure committee are made to the candidate and thus may be subjected to the candidate contribution limits of sections 85301 and 85302. ... The problem (Con't to p. 8) (Con't from p. 7) is that the regulation presumes a contribution to a candidate-controlled ballot measure committee is the equivalent of a contribution to a candidate in all cases, a proposition with which many contributors would disagree. Undoubtedly a contribution to a candidate's campaign committee is a contribution to the candidate since the sole purpose of the committee is the election or reelection of the candidate. Large contributions to the candidate for this purpose are more likely to result in the appearance of corruption. But a contribution to a ballot measure committee, even if controlled by a candidate, typically is a contribution for the passage or defeat of the initiative. The general appearance is that of support for or opposition to the initiative, not for the candidate." [Emphasis added by underlining].

party committees and for PACs, a variety of other permissible expenditures, such as those for 85310 and 85312 purposes, are common, and funds for these are raised under Gov't Code § 85303(c); (3) if the fund raising costs have been paid with Gov't Code § 85303(c) funds, how is the political party or PAC to reimburse its all purpose account under the restrictions of subdivision (c) of Regulation 18534, which prohibits "restricted use" to "all purpose" account transfers except within 14 days of the deposit of the funds into the committee's "restricted use" account?

Fourth, the final problem with the draft regulation is that subdivision (c)(2) and (3) seem to assume that a non-monetary contribution to a candidate would be "contributed" by deposit into the bank account of the committee which made the payment at the candidate's behest. Since only monetary contributions are "contributed" in that fashion, the proposed regulation may prohibit non-monetary contributions as drafted. If that was intended, there is no basis for such a prohibition. If we are misreading the language or meaning, then at a minimum that language needs clarification.

Taken together, the staff draft conflicts with Gov't Code § 85303 and the scheme of chapter 5 of the Act proposes a presumption that is a "legal fiction," which the appellate court previously admonished the Commission for adopting in the Regulation 18530.9 context; is inconsistent with existing Regulation 18534 in two ways; and proposes an allocation scheme that makes little sense and simply unduly burdens committees and donors.

F. The Commission shouldn't adopt a faulty, overbroad regulation on the basis of unreasonable and unwarranted concerns about circumvention of contribution limits.

The FPPC has often asserted a generalized concern about statutes that permit circumvention of contribution limits or allowing undue influence of candidates. However, Gov't Code § 85303(c) should not pose such concerns. Proposition 34, Gov't Code § 85303(a) and (b), enacted limits on contributions that political parties and PACs may use to support candidates for elective state offices to (COLA-adjusted limits) \$30,200 per donor each calendar year for political parties and \$6,000 per donor each calendar year for PACs for the support of all candidates for state elective offices. In particular, the "all or part" approach attempts to limit all uses of Gov't Code § 85303(c) funds, regardless of whether the political party or PAC uses the funds for ballot measures, issue advocacy, independent expenditures, administrative support of its committees or for local candidate support activities. What purpose is served by this approach?

What the appellate court noted in *Citizens to Save California* with respect to Regulation 18530.9 applies with equal force to the staff's proposed Regulation 18530.31:

"It is arbitrary and capricious to limit contributions to" political parties and PACs "in a

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manner that financially hampers some but not all committees, regardless of whether the money actually is used by the candidate for the purpose of election to a specific office. Under the circumstances," the staff's proposed regulation "does not effectuate the purpose of the PRA because it ensnares contributions that do not implicate the evils the PRA is intended to prevent, and it undermines Proposition 34's emphasis on providing individuals and interest groups with a fair and equitable opportunity to participate in the elective and governmental processes." (145 Cal.App.4th at p. 754.)

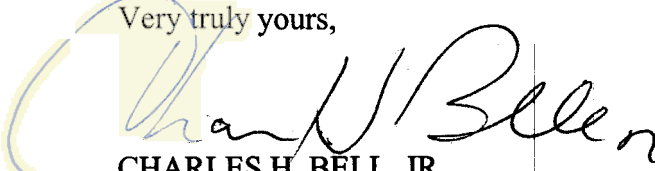
G. Alternative Draft of 18530.31

The undersigned provided to staff an alternative draft approach to this regulation. A copy of the current version of that draft is attached hereto, along with a chart explaining the draft. This draft is both clearer and free of the problems associated with the staff's draft. We propose that it be noticed or pre-noticed for comment if the Commission does not provide very specific directions to staff for the next draft or noticed regulation.

The alternative draft attempts to define what is a "contribution made for the purpose of making contributions to candidates for elective state office" in subdivision (a). The alternative draft contains a more comprehensive list of contributions that are made for purposes other than making contributions to candidates for elective state offices in subdivision (b). The alternative draft does not have any confusing allocation formulae. The alternative draft has two optional approaches, which are fairly straightforward: (1) put an exception to Gov't Code § 85303(c) in subdivision (a) as a type of contribution that is subject to Gov't Code § 85303(a)/(b) limits, or (2) put it in subdivision (b) as an exception to those Gov't Code § 85303(c) contributions that are not subject to limits. As between the two, option 1 is more straightforward. The alternative has a safe harbor for a contributor when he/she designates a contribution for Gov't Code § 85303(c) purposes but the committee uses it for Gov't Code § 85303(a)/(b) purposes. In that case, the committee or political party would violate the law, but the contributor would not.

We look forward to a discussion of these issues at the September 12, 2007 Commission meeting.

Very truly yours,



CHARLES H. BELL, JR.

Enclosures

PROPOSED NEW REGULATION 18530.31

(a) The term “contribution made for the purpose of making contributions to candidates for elective state office,” as used in Government Code section 85303, subdivisions (a) and (b), means any monetary payment made to a committee other than the controlled committee of a candidate for state elective office, which is solicited or used by the committee to make a monetary or non-monetary contributions to candidates for state elective office.

[OPTION 1] [(1) A contribution is “made” by a committee for “the purpose of making contributions to candidates for elective state offices” subject to this regulation when the committee makes any contribution to:

(A) The controlled committee of a candidate for state elective office;

(B) A committee that is primarily-formed to support or oppose candidates for elective state offices; and,

(C) A committee that solicits contributions for purposes of making contributions to candidates for elective state offices.]

Contributions made to a controlled election or re-election committee of a candidate for elective state office are governed exclusively by the provisions of Government Code sections 85301 and 85302.

(b) The term “contribution made for purposes other than making a contribution to a candidate for elective state office,” as used in Government Code section 85303, subdivision (c), includes any payment other than one defined in subdivision (a) of this regulation, including but not limited to:

Payments to a committee, other than a controlled committee of a candidate for elective state office, which are solicited or used by the recipient committee for or to defray:

- (A) the costs of establishing and administering the committee;
- (B) the costs of fund raising by the committee, other than those which are non-monetary contributions to a candidate for elective state office. Payments made for costs of fund raising that are non-monetary contributions to a candidate for elective state office or the controlled committee of such candidate are subject to the provisions of subdivision (a) of this regulation;
- (C) contributions to candidates for elective offices other than elective state offices;
- (D) contributions to committees other than [OPTION 2][controlled committees of a candidate for elective state office, committees primarily-formed to support or oppose candidates for elective state offices, or committees that solicit such contributions for purposes of making contributions to candidates for elective state offices] [OPTION 1][those identified in subdivision (a)(1)(A) to (a)(1)(C) hereof];
- (E) payments for issue advocacy communications as defined in Government Code section 85310, except as provided in subdivision (c) thereof;
- (F) payments for independent expenditures on behalf of candidates for elective offices, whether local or elective state office, or contributions to committees that make independent expenditures for candidates for elective offices, whether elective state office or local office; and,
- (G) payments for support of issues or ballot measures or to committees that are primarily formed to support issues or state or local ballot measures, whether those committees are controlled by a candidate for elective state office or not, and contributions to

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committees that solicit such contributions for the purpose of making expenditures in support of issues or ballot measures.

- (2) Payments which are expressly directed or limited by the contributor "for purposes other than making contributions to candidates for elective state office" will be presumed to be made for these other purposes. If a committee proceeds to use such payments for the purpose of making contributions to candidates for elective state office, the contributor shall not be in violation of Section 85303(a) or (b) unless the contributor consented to such use.

PROPOSED AMENDMENT OF REGULATION 18215(c)(16) (Exhibit B)

Repeal 2 CCR 18215(c)(16), and amend 2 CCR 18215 to add subdivision (b)(4), as follows:

18215. Contribution.

(b) The term "contribution" includes:

(4) A payment for the establishment and administration of a committee. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising for the committee, and other expenses incurred in setting up and running a committee.

EXPLANATION AND JUSTIFICATION FOR ALTERNATIVE REGULATION 18530.11
Interpreting Gov't. Code 85303

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| <u>PROPOSED NEW REGULATION 18530.113</u> | <u>JUSTIFICATION</u> |
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| <p>(a) The term “contribution made for the purpose of making contributions to candidates for elective state office,” as used in Government Code section 85303, subdivisions (a) and (b), means any monetary payment made to a committee other than the controlled committee of a candidate for state elective office, which is solicited or used by the committee to make monetary or non-monetary contributions to candidates for state elective office. Contributions made to a controlled election or re-election committee of a candidate for elective state office are governed exclusively by the provisions of Government Code sections 85301 and 85302.</p> | <p>Monetary payments solicited or used to make monetary or non-monetary contributions to candidates are the core elements of a contribution limitation scheme such as 85303(a) [for PACs] and (b) [for political party committees] : these apply only to contributions made to such committees for the purposes of supporting candidates for elective state office by the terms of the statute and section.</p> |
| | <p>Covers solicitation or use of such contributions.</p> |
| | <p>Makes clear that this applies to committees other than candidate committees of candidates for elective state offices, to avoid making a candidate committee a PAC with different contribution limits.</p> |

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| <p>[OPTION 1] [(1) A contribution is “made” by a committee for “the purpose of making contributions to candidates for elective state offices” subject to this regulation when the committee makes any contribution to:</p> <p>(A) The controlled committee of a candidate for state elective office;</p> <p>(B) A committee that is primarily-formed to support or oppose candidates for elective state offices; and,</p> <p>(C) A committee that solicits contributions for purposes of making contributions to candidates for elective state offices.]</p> | <p>OPTION 1: Provision is put in subdivision (a)(1)(A)-(C) for clarity, and this subdivision simply cross references those provisions. See p. 6 for additional part of Option 1 and OPTION 2.</p> |
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| <p>(b) The term "contribution made for purposes other than making a contribution to a candidate for elective state office," as used in Government Code section 85303, subdivision (c), includes any payment other than one defined in subdivision (a) of this regulation, including but not limited to:</p> <p>(1) Payments to a committee, other than a controlled committee of a candidate for elective state office, which are solicited or used by the recipient committee for or to defray:</p> | <p>85303(c) is the mirror image. This subdivision reflects this mirror image of subdivision (a) and identifies what 85303(a) and (b) do not cover. That is the structure of the proposed regulation, with some exceptions to this. The exceptions (such as (b)(1)(D) below) are delimited, and could be placed in subdivision (a) as examples or to concretely cover them in the limits of 85303(a) and (b).</p> <p>(1) includes solicitation or use for such contributions.</p> |
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| <p>(A) the costs of establishing and administering the committee;</p> | <p>These contributions are made for purposes of administering the PAC, which may have multiple non-state candidate support purposes. However, the commission has previously considered such purposes to be generic PAC or committee fundraising, and not to be for candidate support.</p> |
| <p>(B) the costs of fund raising by the committee, other than those which are non-monetary contributions to a candidate for elective state office. Payments made for costs of fund raising that are non-monetary contributions to a candidate for elective state office or the controlled committee of such candidate are subject to the provisions of subdivision (a) of this regulation;</p> | <p>General rule is that fundraising costs for the PAC's generic fundraising activities are not 85303(a) or (b) expenses, for the reasons set forth in Bell Advice Request, April 2006 and Olson Comment letter of June 2007.</p> <p>Contains an express exception for payments that are non-monetary contributions to the candidate for elective state office for a specific type of PAC-sponsored candidate fundraiser, consistent with the 2006 <i>Wilson Advice Letter</i>.</p> |

EXPLANATION AND JUSTIFICATION FOR ALTERNATIVE REGULATION 18530.11
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| (C) contributions to candidates for elective offices other than elective state offices; | Since 85303(a) and (b) specifically cover only contributions raised for candidates for state elective offices, contributions to other candidates are specifically exempted. This is consistent with all prior FPPC advice. |
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EXPLANATION AND JUSTIFICATION FOR ALTERNATIVE REGULATION 18530.11
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| <p>(D) contributions to committees other than [OPTION 2][controlled committees of a candidate for elective state office, committees primarily-formed to support or oppose candidates for elective state offices, or committees that solicit such contributions for purposes of making contributions to candidates for elective state offices] [OPTION 2][those identified in subdivision (a)(1)(A) to (a)(1)(C) hereof];</p> | <p>OPTION 1: Provision is put in subdivision (a)(1)(A)-(C) for clarity, and this subdivision simply cross references those provisions.</p> <p>OPTION 2: A catchall exemption for contributions made to all committees <u>other than</u> the 3 enumerated types- (1) controlled committees of candidates for elective state offices; committees; (2) primarily-formed committees to support candidates for elective state offices; (3) committees that solicit contributions for candidates for state elective offices.</p> |
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EXPLANATION AND JUSTIFICATION FOR ALTERNATIVE REGULATION 18530.
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| <p>(E) payments for issue advocacy communications as defined in Government Code section 85310, except as provided in subdivision (c) thereof;</p> | <p>Issue advocacy communications are subject to no limits or their own limits. For party committees, such contributions would be subject to the 85303(b) limits if used for issue advocacy communications coordinated with the identified candidate, per 85310(d).</p> |
| <p>(F) payments for independent expenditures on behalf of candidates for elective offices, whether local or elective state office, or contributions to committees that make independent expenditures for candidates for elective offices, whether elective state office or local office; and,</p> | <p>Contributions to independent expenditure committees for state or local offices are not subject to any state limits. Local limits, if any, would apply. <i>But cf. Lincoln Club v. City of Irvine.</i></p> |

EXPLANATION AND JUSTIFICATION FOR ALTERNATIVE REGULATION 18530.11
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| <p>(G) payments for support of issues or ballot measures or to committees that are primarily formed to support issues or state or local ballot measures, whether those committees are controlled by a candidate for elective state office or not, and contributions to committees that solicit such contributions for the purpose of making expenditures in support of issues or ballot measures.</p> | <p>Contributions to ballot measure committees are not subject to limits under <i>Citizens Against Rent Control v. City of Berkeley</i>, 454 U.S. 290 (1981). Contributions to candidate-controlled ballot measures are not regulated by state law, and may be protected under CARC. <i>Citizens to Save California et al. v. FPPC</i>, 145 Cal.App.4th 736 (2006). Contributions to committees that support issues but not candidates or ballot measures are not limited in state law.</p> |
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EXPLANATION AND JUSTIFICATION FOR ALTERNATIVE REGULATION 18530.11
Interpreting Gov't. Code 85303

September 10, 2007

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| <p>(2) Payments which are expressly directed or limited by the contributor "for purposes other than making contributions to candidates for elective state office" will be presumed to be made for these other purposes. If a committee proceeds to use such payments for the purpose of making contributions to candidates for elective state office, the contributor shall not be in violation of Section 85303(a) or (b) unless the contributor consented to such use.</p> | <p>This is a safe harbor for the contributor who makes contributions earmarked for purposes other than candidate support to a committee which uses the contributions to candidates for elective state offices or by party committees which do so. The safe harbor language is the same as the language in Regulation 18536(g).</p> <p>This could be drafted differently to accomplish the same result.</p> |
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